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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/974,780 | 10/09/2001 | Max Schaldach | 7040-46 | 6883 |

21324 7590 03/02/2005
HAHN LOESER & PARKS, LLP
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Suite 300
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EXAMINER

BAXTER, JESSICA R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3731

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 09/974,780 | Applicant(s) SCHALDACH ET AL. | |
| | Examiner Jessica R Baxter | Art Unit 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 41, 42, 50-52, 59 and 60 is/are rejected.
- 7) ☒ Claim(s) 34-40, 44-49 and 54-58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2004 has been entered.

Claim Objections

2. Claims 35-40, 44-49, and 54-58 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims are dependent on claims that are cancelled.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

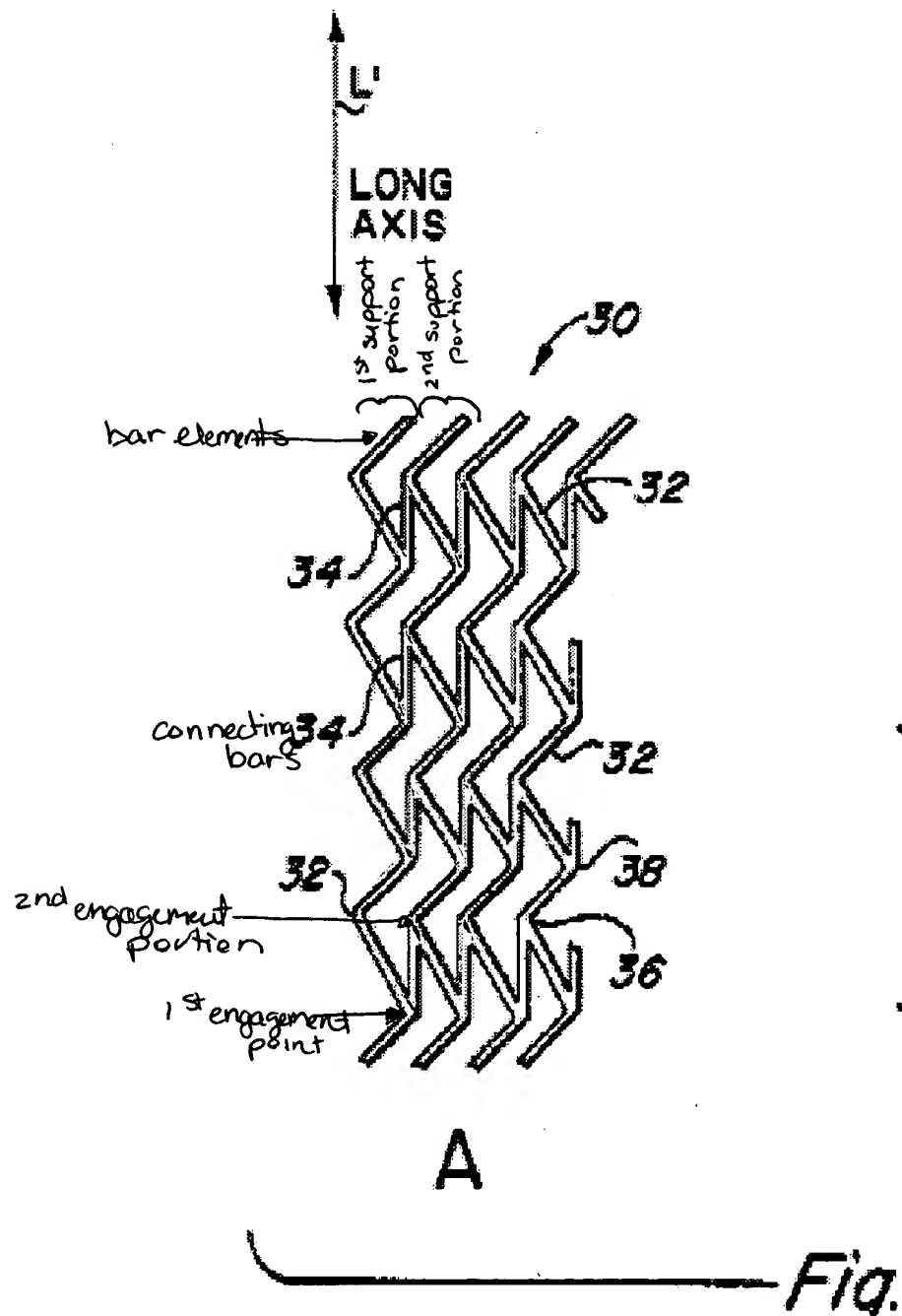
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-15, 41, 42, 50-52, 59 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB 2003/0004567 to Boyle et al.

Boyle discloses a stent, for expansion from a first condition into an expanded second condition in which it holds a vessel in an expanded state, said stent comprising: a tubular body, a peripheral surface of which is formed by a plurality of support portions that extend in a longitudinal direction of the stent, the support portions comprising: a plurality of bar elements wherein each end of each bar element, excepting bar elements on the ends of the tubular body, connects to an adjacent bar element, forming an angle of between 80 and 100 degrees; and a plurality of connecting bars, extending rectilinearly in the longitudinal direction of the stent when in the first condition, that connect the bar elements; wherein the support portions form a plurality of support portion groups with at least a first support portion and a second support portion in adjacent relationship thereto in a peripheral direction of the stent, the bar elements of which extend in a meander configuration in the longitudinal direction of the stent, and wherein a first engagement point of the connecting bars engages the first support portion and a second engagement point of the connecting bars engages the second support portion, such that the first and second engagement points are spaced apart from each other in the longitudinal direction of the stent and the connecting bars are configured and arranged so the spacing in the longitudinal direction between the first and second engagement points decreases upon expansion of the stent (FIG. 3). Boyle discloses that at least the bar elements of a first support portion and of the two second support portions arranged in the peripheral direction of the stent at both sides of the first support portion extend in a meander configuration in the longitudinal direction of the stent and the first engagement points of the connecting bars engage the first support portion and the second engagement points of the connecting bars engage one of the two second support portions, wherein the first and second engagement points are spaced relative to each other in

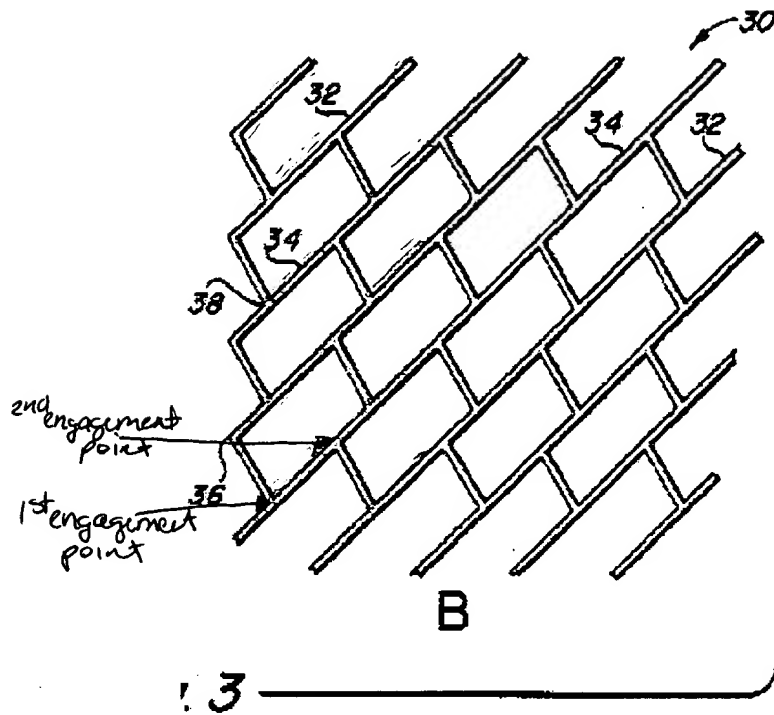
the longitudinal direction of the stent and the connecting bars are configured and arranged so that the spacing in the longitudinal direction of the stent changes between the first and second engagement points changes upon expansion of the stent in the same manner. Boyle discloses that at least the first engagement points of the connecting bars are located near a turning point of the bar element to which the connecting point is engaged. Boyle discloses that the second engagement points of the connecting bars are located near a turning point of the bar element to which the connecting point is engaged. Boyle discloses that the connecting bars are of a substantially straight configuration. Boyle discloses that a connecting line between the first and second engagement points extends substantially in the longitudinal direction of the stent. Boyle discloses that the bar elements of the first and second support portions are of substantially the same period configuration and a length of the connecting bars is such that in the second condition of the stent the adjacent bar elements extend substantially in phase with each other with respect to the longitudinal direction of the stent. Boyle discloses that at least one support portion formed by a bar element, the direction of curvature of which changes in a central region between a pair of turning points (see attached Figures 3A and 3B, Figure 3A is the stent in the first condition, and Figure 3B is considered to be the stent in the second condition).

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First Condition of the Stent

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Second Condition of the Stent

Response to Arguments

5. Applicant's arguments with respect to claims 1-60 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

6. Claims 34, 43, and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter
Examiner
Art Unit 3731

JB
rb

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ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

2/28/05